

82-152-1

ATTORNEY GENERAL
GREGORY H. SMITH

DEPUTY ATTORNEY GENERAL
DEBORAH J. COOPER

THE STATE OF NEW HAMPSHIRE



ATTORNEYS
DANIEL J. MULLEN
JAMES D. CAHILL, III
RONALD F. RODGERS
JEFFREY R. HOWARD
G. DANA BISBEE
GREGORY W. SWOPE
PETER T. FOLEY
STEVEN M. HOURAN
EVE H. OYER
LESLIE J. LUDTKE
ROBERT P. CHENEY, JR.

ASSISTANT ATTORNEYS GENERAL
JOHN T. PAPPAS
JAMES E. TOWNSEND
ANNE R. CLARKE
MARC R. SCHEER
DONALD J. PERRAULT
MARTIN R. JENKINS
PETER W. MOSSEAU
BETSY S. WESTGATE
EDWARD L. CROSS, JR.
MARTHA V. GORDON
PETER C. SCOTT
MICHAEL A. PIGNATELLI
BRIAN T. TUCKER
PAUL BARBADORO
BRUCE E. MOHL
JOHN A. MALMBERG
DOUGLAS L. PATCH
LORETTA S. PLATT

THE ATTORNEY GENERAL
STATE HOUSE ANNEX
25 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

March 14, 1983

Col. Paul F. O'Leary, Director
Division of State Police
Hazen Drive
Concord, New Hampshire 03301

Re: Requirement of a License for Use of Black Powder for Wood Splitting

Dear Col. O'Leary:

You have asked whether a license from the division of state police is required under RSA 158:9-a (Supp. 1981) for the purchase or use of black powder for wood splitting.

RSA 158:9-a imposes the requirement of a license in order to "purchase, store or transport or attempt to purchase, store or transport," and to "sell," any high explosive. RSA 158:9-a, I and III (Supp. 1981). The term "high explosive" specifically includes "black powder," except where used in sporting rifles and when purchased or sold in quantities of 50 pounds or less or stored in quantities of 5 pounds or less. RSA 158:9-a, VI (Supp. 1981). As this is the only exception from the licensing requirement which otherwise covers black powder, a license is presently required for the purchase, transportation, storage or sale of black powder for any other purpose. A license is not technically required under the statute for the explosive's "use," although, as a practical matter, the "use" would not normally be independent of the item's purchase, transport or storage.

If the division presently has a rule permitting it to issue specialized or limited licenses for the use, purchase and transport of particular types of explosives, it may certainly do so for black powder used for this purpose. In addition, the division may promulgate a rule under the authority of RSA 158:9-f exempting



OFFICE OF THE ATTORNEY GENERAL

PAGE 2

black powder used for wood splitting from the licensing requirement if it chooses to do so.

If I can be of further assistance, please let me know.

Very truly yours,

Betsy S. Westgate

Betsy S. Westgate
Assistant Attorney General
Division of Legal Counsel

BSW:ab
#82-152-I